

UNITED STATES OF AMERICA

$$\vdots$$

V.

⋮

CRIMINAL NO. 99-154

OMAR BEST

$$\vdots$$

a/k/a "Jamil Baker"

PRETRIAL DETENTION ORDER

AND NOW, this day of April 1999, upon consideration of the government's motion for pretrial detention, the hearing on that motion and the argument of counsel for the government and defendant at that hearing, the Court finds that:

- (a) the government has proven by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of defendant as required; and
- (b) the government has proven by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community,

as required by Title 18, United States Code, Section 3142(e).

The Court makes the following findings of fact:

This case is appropriate for detention under Title 18,
United States Code, Section 3142(e) because:

A. Probable Cause and the Evidence in This Case

1. There is probable cause to believe that the defendant committed the offense of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), as

charged in an indictment returned by a federal grand jury on March 23, 1999.

2. The evidence against the defendant is extremely strong. On January 8, 1999, Philadelphia Police Officers Maurice Scott and Ronald Davis reported to 18th and Cumberland Streets in Philadelphia in response to a police radio call that there was an armed man on that corner. The officers observed defendant Omar Best standing on that corner. The defendant fit the description of the armed man described in the radio call. Shortly after the officers exited their vehicle and began walking toward the defendant, he ran away from them. The officers caught the defendant after a short chase. During a protective pat down, the officers recovered a loaded .357 magnum revolver from the defendant's pants pocket.

3. As discussed in greater detail below, the defendant is a convicted felon and, thus, is prohibited from possessing a firearm.

4. The firearm possessed by the defendant -- a Rossi Model M877 .357 magnum revolver bearing serial number F355949 -- was manufactured outside Pennsylvania and, thus, was possessed by the defendant in interstate commerce.

5. The strength and nature of the case against the defendant and the corresponding probability that the defendant will be incarcerated for a significant period of time establishes his danger to the community and increases the already serious risk that the defendant will not appear as required by the Court.

B. Penalties

1. The defendant faces a maximum sentence of 10 years imprisonment, a three-year term of supervised release, a \$250,000 fine and a \$100 special assessment.

2. Based on the information available to the government at this time, the government conservatively estimates that, under the Sentencing Guidelines, the defendant faces a sentencing range of 110-137 months.

3. Accordingly, the defendant has a substantial incentive to flee.

C. Risk of Flight

1. The defendant presents a serious risk of flight. His criminal history reflects a pattern of brazen disregard for court-ordered supervision. It is clear from this history, which is chronologically summarized below, that no combination of bail conditions will prevent this defendant from engaging in further criminal activity or ensure his appearance in court.

- a. On May 16, 1996, the defendant was arrested (Case No. CP #9802-0839) and charged with firearms offenses.
- b. On October 31, 1996, while on pretrial release for the May 16, 1996 firearms charges, the defendant was arrested (Case No. CP #9611-0894) and charged with robbery and firearms offenses.
- c. On December 3, 1996, while on pretrial release for the May 16, 1996 firearms charges and the October 31, 1996 robbery and firearms charges, the defendant was arrested (Case No. CP #9612-1106) and charged with aggravated assault, attempted rape, indecent assault and related offenses.

- d. On May 12, 1997, the defendant was convicted of the May 16, 1996 firearms charges and sentenced to 1-2 years imprisonment.
- e. On June 4, 1997, the defendant was convicted of the December 3, 1996 indecent assault charge and sentenced to 1-2 years imprisonment.
- f. On February 23, 1998, the defendant was convicted of the October 31, 1996 robbery charge and sentenced to 1-2 years imprisonment.
- g. On April 28, 1998, while he was under supervision after his release from prison for all three prior convictions, the defendant was arrested for robbery, assault and firearms offenses. Those charges remain pending against the defendant in the Philadelphia County Court of Common Pleas.
- h. On January 8, 1999, while on pretrial release for the April 28, 1998 charges and under court-ordered supervision for his three prior convictions, the defendant committed the offense described in the indictment.
- i. On February 4, 1999, while on pretrial release for the April 28, 1998 and January 8, 1999 charges and under court-ordered supervision for his three prior convictions, the defendant was arrested for attempting to rape a minor at gunpoint. According to the victim, a 16-year-old girl, the defendant told her to pull down her pants while he held a gun in his hand. He then ordered her to perform oral sex on him.¹

2. The defendant has a contempt of court conviction and at least three violations of probation. As set forth above, he has committed numerous criminal offenses while on bail or

¹ Based on the information available to the government at this time, it appears that the victim of the attempted rape failed to appear at the defendant's preliminary hearing and, therefore, the rape charges were dismissed.

other court-ordered supervision. Thus, he is not a candidate for pretrial release.

3. The defendant tried to flee when he observed police officers walking toward him on January 8, 1999. That attempt at flight further highlights the risk of flight he presents in this case. The risk of flight is increased here because of the certain and severe penalties facing the defendant of which he is now aware.

4. The defendant provided the police officers with a false name, "Jamil Baker," when he was arrested. His willingness to provide false identification information and to lie to law enforcement authorities provides further evidence of the risk of flight posed by the defendant.

5. The defendant has no employment ties to this district. According to the state pretrial services office, in January 1999, the defendant reported no verifiable employment and claimed only to perform "odd jobs" on an irregular basis.

D. Prior Criminal Record and Danger to Community

1. The defendant poses a serious danger to the community. Not only did he possess a dangerous weapon -- a .357 magnum revolver -- after having been convicted of three felonies, but the gun was loaded. The possession of loaded guns by convicted felons poses an unacceptable threat to the community.

2. Since 1994, the defendant has been arrested 10 times and convicted of three serious offenses. He has at least one other open case, which includes robbery and other violent

felony charges, pending against him in the Court of Common Pleas. He has a contempt of court conviction and at least three violations of probation. His disregard for the safety of the community is plain.

3. The defendant has a problem staying away from firearms. He has been arrested for firearms offenses on seven separate occasions. If permitted to return to the community pending trial, there is every reason to believe that the defendant will re-arm himself and endanger the community.

4. The defendant also appears to have a problem with sexual assault. He was convicted of indecent assault in 1997. Just a few months ago, a 16-year-old girl alleged that he tried to rape her at gunpoint.

5. The defendant has continued to engage in dangerous criminal activity notwithstanding the conditions of pretrial release and probation which have been imposed upon him in at least five different criminal cases. The community will be endangered if he is released.

Therefore, it is ORDERED that:

(1) The defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(2) The defendant be afforded reasonable opportunity for private consultation with counsel; and

(3) On order of a Court of the United States, or on

request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

BY THE COURT:

HONORABLE DIANE M. WELSH
United States Magistrate Judge